IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1092 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
BHARVAD BHALABHAI RAMUBHAI & 1 - Opponent(s)

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Appearance :
MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 30/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal dated 16-2-2005 rendered by the Assistant Sessions Judge, Patan in Special Atrocity Case No.216 of 2002 acquitting the respondents accused for the offences punishable u/ss 323, 504, 506(2) and 114 of the I.P. Code and u/s 135 of the Bombay Police Act as well as u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act').

2. In brief, the prosecution case was that complainant Vankar Motiben Devsinhbhai was residing at village Dantisana Tal. Sami and was doing labour work. She belonged to a member of the scheduled caste and her son Mohanbhai Devsinhbhai had filed a compliant on 18-12-1999 against one Bharwad Mahadevbhai Bhurabhai and others of village Dantisana. On 30-12-1999 at about 8-00 a.m. when she was coming to her house keeping, a grudge of the said complaint, the respondents who were sitting with stick in their hand told her that they have come to know that her son had

filed a complaint and therefore she should tell her son to withdraw the complaint but she refused to withdraw the complaint. On saying so respondent - accused Bharwad Bhalabhai Ramubhai gave stick blow on her back and respondent accused Bharwad Kalabhai Lakhubhai gave push to her and insulted her by uttering derogatory words referable to her caste and also gave abuses and rushed to beat her. On account of uproar Vankar Amuben Mavjibhai intervened and both the accused were persuaded to leave. Both the accused while leaving gave threats that they would kill her if action is taken against them..

3. On the basis of complaint given by Motiben to the Police Sub-Inspector, Sami Police Station, Sami, offence was registered as II – CR No. 167 of 1997 by Sami Police Station and investigation was started. During the course of investigation, statement of witnesses were recorded and panchnama of scene of offence and panchanama of discovery of weapons were drawn. The accused were arrested.

4. On completion of the investigation,

charge sheet was laid before learned J.M.F.C., Sami for the offences punishable u/ss 323, 504, 506(2) and 114 of the I.P. Code, u/s 135 of the Bombay Police Act and u/s 3 (1) (x) of the Atrocities Act. As the offence was exclusively triable by the Special Court, it was committed to the Sessions Court, Mehsana and it was registered as Special Case No.77 of 2000. Thereafter, on bifurcation of Mehsana District, the case was transferred to Sessions Court, at Patan and it was renumbered as Special Atrocity Case No.216 of 2002. Charge Exh. 6 was framed by Special Judge Patan against the accused. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution led evidence to prove the charge. On completion of recording of evidence, the leaned trial Judge explained the incriminating circumstances appearing in the evidence against the accused who explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure. The accused in their further statement denied having committed the offence and stated that Jabuben Madhavbhai

Bharwad was the wife of their brother and she was Sarpanch of the village. The son of the complainant, Mohanbhai Devshinhbhai had allegedly occupied two rooms of the school and 24 acres of gaucher land, therefore Gram Panchayat had issued notice to him. Hence keeping grudge of that, false case is filed against them.

5. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that the prosecution failed to prove the charge levelled against the accused and acquitted the accused for the offences charged against them. Being aggrieved and dissatisfied by the judgment, State has preferred this appeal with a prayer to grant leave to appeal.

6. We have heard the learned A.P.P. for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the case.

7. In order to prove the charge levelled against the accused, the prosecution examined complainant P.W. 1 Motiben Devsinhbhai Harijan

at Exh. 14. It appears from the evidence of this witness that the complainant was a member of scheduled caste and her son Mohanbhai was given land by the Government. One Jabuben Mahadevbhai was the Sarpanch and the accused were her 'diyers' i.e. brothers-in-law (husband's younger brothers). It also appears that the Sarpanch had given a notice to Mohanbhai that the land occupied by him was encroached by him and therefore Mohanbhai had filed a complaint under the provisions of the Atrocities Act against the husband of Sarpanch. The evidence also indicates that Mohanbhai had also filed a suit against Sarpanch and Gram Panchayat in respect of the said land. The evidence also indicates that Mohanbhai had also encroached upon two rooms of Gram Panchayat. Therefore, there were disputes between the son of the complainant and accused in respect of the properties and son of the complainant had filed complaint against husband of Sarpanch under the Atrocities Act. Considering this back ground, possibility of false implication of the respondents accused who were near relatives of Sarpanch, in the offence, cannot be ruled out.

8. The prosecution also produced complaint at Exh. 27. The complaint indicates that the accused uttered derogatory words referable to caste of the complainant and also indicates that the injuries inflicted by the accused. But, there is no evidence to indicate that the complainant belonged to a member of the scheduled caste and the accused uttered the derogatory words with an intention to humiliate the complainant in public place within public view. In view of the fact that there is no evidence with regard to the caste of the complainant it cannot be said that the provisions of the Atrocities Act are attracted.

9. The prosecution also examined P.W. 2 Mohanbhai Devsinhbhai Vankar, son of the complainant at Exh. 15. The witness was at home when the incident occurred. According to the witness, the incident occurred on 31-12-1999 at about 8-00 in the morning. The witness admitted that he was in illegal possession of Gram Panchayat land and had made request to the Gram Panchayat to transfer the land to his name. The witness also admitted that Sarpanch of village had issued notice to him to hand

over possession of the land and therefore he had filed complaint against the husband of Sarpanch Jabuben. In view of this evidence, it becomes clear that there were disputes between Gram Panchayat and the son of the complainant with regard to the land of Gram Panchayat and proceedings were filed in that regard. A very near relative of the accused was Sarpanch and there were disputes between son and complainant and Sarpanch, therefore, no much credence can be given to the evidence of this witness. Moreover, witness was not an eye witness to the incident and therefore his evidence cannot be relied upon to connect respondents - accused with the offence.

10. The prosecution examined P.W. 3 Amuben Mavjibhai Vankar at Exh. 16. According to the witness, the incident occurred at 8-00 in the morning and the witness was in 'onsari' of her house and the complainant was standing on the road outside 'khadaki'. The witness also deposed that accused Bhalubhai uttered certain derogatory words and both the accused gave threats to kill the son of the complainant if the complaint was not withdrawn. The evidence of this witness also

indicates that accused Bhalubhai gave stick blow on the back of the complainant. In the cross-examination she admitted that people had assembled at the time of the incident and her 'Jeth' (elder brother of husband) had occupied possession of the school building and the cases are pending in the court in that regard. The witness tried to indicate that she was present at the time of the incident. However, according to the complainant Motiben, the incident occurred at the outskirt of village when she was returning home, whereas according to the witness, the incident occurred on the road outside 'khadaki' and she was in the 'onsari' of her house. This is a material contradiction with regard to place of the incident. Moreover, according to P.W. 1 Motiben, accused Bhalabhai inflicted stick blows but according to this witness, accused Bhalubhai inflicted the injuries to the complainant. In view of these contradictions, it is difficult to believe that the witness was present at the time of incident. Therefore, the evidence of this witness does not inspire confidence.

11. The prosecution also examined panch to

the panchanama of scene of offence P.W. 4 Savabhai Kalabhai Vankar at Exh. 17. According to the witness, when he went to inquire about P.W. 1 Motiben he was asked to remain as panch and had subscribed his thumb impression on the panchanama Exh.18. The witness also admitted that he was illiterate and was not aware about any fact.

12. The prosecution also examined another panch P.W. 5 Lakhubhai Mohanbhai Vankar at Exh. 19. The witness is illiterate and had subscribed his thumb impression on the panchanama at the instance of the police. The witness does not know the contents of the panchanama The witness was 'vevai' (father-in-law of son/daughter) of the complainant.

13. The prosecution produced panchanama of scene of offence at Exh.18. The place of the incident is near Harijan Khadaki on the main road. In view of this evidence, there is no discrepancy about the place of incident. Moreover, in light of evidence of P.W. 4 Savabhai and P.W. 5 Lakhubai the panchanama of scene of offence Exh. 18 does not inspire confidence.

14. The prosecution examined P.W. 6 Mahadevbhai Govabhai Thakor at Exh.20 and P.W. 7 Ramji Laxmanji at Exh. 22 to prove panchanama of recovery of weapons Exh.21. The witness turned hostile and did not support the prosecution case. The witnesses were confronted with the contents of the panchanama. The prosecution has not been able to elicit that the weapons were recovered in presence of P.W. 6 Mahadevbhai Thakor Exh. 20 and P.W. 7 Ramajibhai Exh. 22 and that panchanama Exh. 21 was drawn in their presence.

15. The prosecution examined P.W 8 Dr. Girishbhai Danabhai Jhala Exh. 23. The witness examined injured P.W. 1 Motiben. According to the witness, the injured came to the Government Hospital on 31-12-1999 at 3-25 in the noon and was examined by him. The witness issued certificate Exh.24. In the cross-examination, the witness admitted that he did not mention in the certificate about the nature of weapon used in the commission of offence and as to how the injuries were caused to the injured. The Certificate Exh. 24 indicates that the patient went to the

hospital on 31-12-1999 at 3-25 p.m. and swelling was found on right side shoulder of the patient. It does not indicate that the injury was possible on account of stick blow. It does not record history of the injury. It is very strange that the injured went to the hospital for treatment on the next day of the incident though complaint was lodged immediately after the incident. In view of this, it is difficult to believe that P.W. 1 Motiben was injured on account of assault by accused Bhalabhai and had taken treatment for the injuries. Therefore, Medical Certificate Exh. 24 does not implicate the respondents - accused in the offence.

16. The prosecution examined Investigating Officer P.W. 9 Jaysinh Ajitsinh Chauhan at Exh.25. The witness carried out investigation by drawing panchanama, recording statement of witnesses and filing charge sheet. In the cross-examination, the witness admitted that he did not record statement of any independent witness. The witness also admitted that Mohanbhai Vankar son of the complainant had filed complaint against Mahadevbhai Bhurabhai and 11 others for the offence punishable under

the provisions of the Atrocities Act and that said Mohanbhai Vankar had taken possession of two rooms of school building of Gram Panchayat. In view of this evidence, it appears that Mohanbhai Vankar son of the complainant had animosity against the husband of Sarpanch Jabuben. Therefore, possibility of false implication of the respondent – accused cannot be ruled out.

17. Taking overall view of the evidence adduced by the prosecution in this case, it clearly emerges that no independent witness is examined by the prosecution to prove the charge of threats allegedly given by the respondents – accused to the complainant. Even there is no evidence to indicate that the injuries were caused to the complainant by inflicting stick blows. Likewise, there is no evidence to indicate that the complainant was a member of the scheduled caste and the accused uttered derogatory words referable to her caste with an intention to humiliate the complainant in public place within public view. There is no evidence to indicate that sticks were recovered from the accused and that the accused were in possession of the

weapons in contravention of any notification issued under the provisions of the Bombay Police Act.

18. In view of above, in our view, the learned trial Judge was justified in recording acquittal of the accused and no interference is warranted in the impugned judgment. Hence, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/